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Innowest Sdn Bhd v The Director of Lands and Surveys

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HIGH COURT (KOTA KINABALU) — APPLICATION FOR JUDICIAL REVIEW NO BKI-25JR-7/4 OF 2021
LEONARD SHIM JC
15 DECEMBER 2021

C

Civil Procedure — Judicial review — Application for — Applicant applied for judicial review against decision of respondent to revoke offer to alienate parcel of land — Whether revocation of offer to alienate land was within discretion or power of respondent — Whether decision was lawful and valid — Sabah Land Ordinance s 9

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This was an application for judicial review of the respondent's decision to revoke the offer to alienate a parcel of land. The applicant had applied for a parcel of land and approval was granted. Subsequently the respondent issued an offer to alienate land to the applicant for a parcel of land which the applicant accepted. The applicant was informed that the title deed to the land had already been prepared. However, the applicant then received a letter from the respondent revoking the offer to alienate the land. The respondent subsequently revealed a complaint had been forwarded to the Secretary of Natural Resources ('Secretary') and that the Secretary informed the respondent that the Cabinet had met and the respondent was instructed to cancel the offer to alienate the land issued to the applicant on the basis that the land was to be maintained as a foreshore reserve. The applicant wrote to the respondent enclosing a survey plan prepared by a licensed firm of surveyors ('the surveyor') showing that the land was not within any existing foreshore reserve. It was also pointed out, amongst others, that the decision to revoke the offer to alienate the land was premised on an incorrect assumption and that the applicant was never consulted. The applicant demanded that the respondent revoke or cancel the revocation of the offer to alienate the land. The respondent did not respond to the applicant's letter. On clarification sought by the applicant, the surveyor confirmed that the land did not fall within the reserve area or the seashore area. Hence, this application by the applicant. The reliefs sought, inter alia, were: (a) a declaration that the parcel of land was not within any foreshore reserve or foreshore area; (b) an order of certiorari to quash the decision of the respondent in revoking the offer to alienate the land; and (c) an order of mandamus compelling the respondent to complete the preparation of and to issue the document of title to the applicant within one month.

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Held, dismissing the application:

(1) The alienation of state land under s 9 of the Sabah Land Ordinance ('the SLO') was not mandatory but was discretionary. The respondent acted within his discretion to revoke the offer to alienate the land in accordance with the specific direction or decision of the Cabinet. As s 9 of the SLO only imposed a discretion upon the respondent to alienate the land and not a duty, such discretion was not subject to an order of mandamus. Hence, the applicant's prayer for an order of mandamus was without merit. The revocation was done in accordance with s 9 of the SLO and the Sabah Land Rules and was not contrary to the rules of natural justice. The doctrine of legitimate expectation did not apply to the instant case and could not override the express statutory provisions of the SLO and the Sabah Land Rules (see paras 64, 67 & 70).

(2) The Cabinet's decision to revoke the offer to alienate land as the land may be or needed to be reserved for a public purpose was not so unreasonable that no decision maker or authority could have made. In the premises, the decision of the respondent to exercise his discretion under s 9 of the SLO to revoke the offer to alienate land in accordance the Cabinet's decision or direction was lawful and valid. Unless and until the decision of the Cabinet had been quashed or set aside by the court, the decision of the respondent stands (see para 81).

[Bahasa Malaysia summary

Ini adalah permohonan untuk semakan kehakiman terhadap keputusan responden untuk membatalkan tawaran memberi milik sebidang tanah. Pemohon telah memohon pembahagian tanah dan kelulusan telah diberikan. Seterusnya responden mengeluarkan tawaran untuk memberi milik tanah kepada pemohon untuk tanah yang diterima oleh pemohon. Pemohon dimaklumkan bahawa surat hak milik tanah telah pun disediakan. Bagaimanapun, pemohon kemudian menerima surat daripada responden yang membatalkan tawaran memberi milik tanah tersebut. Responden kemudiannya mendedahkan aduan telah diajukan kepada Setiausaha Sumber Asli ('Setiausaha') dan bahawa Setiausaha memaklumkan responden bahawa Kabinet telah bermesyuarat dan responden telah diarahkan untuk membatalkan tawaran untuk memberi milik tanah yang dikeluarkan kepada pemohon atas dasar bahawa tanah itu akan dikekalkan sebagai rizab pantai. Pemohon menulis kepada responden dengan melampirkan pelan ukur yang disediakan oleh firma juruukur berlesen ('juruukur') yang menunjukkan bahawa tanah itu tidak berada dalam mana-mana rizab pantai sedia ada. Ia juga ditegaskan, antara lain, bahawa keputusan untuk membatalkan tawaran memberi milik tanah itu adalah berdasarkan andaian yang tidak betul dan bahawa pemohon tidak pernah dirujuk. Pemohon menuntut agar responden menarik balik atau membatalkan pembatalan tawaran memberi milik tanah tersebut. Responden tidak menjawab surat pemohon. Dengan penjelasan yang dipohon oleh pemohon, juruukur mengesahkan bahawa tanah itu tidak

termasuk dalam kawasan rizab atau kawasan pantai. Oleh itu, permohonan ini oleh pemohon. Relif yang dipohon, antara lain, adalah: (a) pengisytiharan bahawa tanah itu tidak berada dalam mana-mana rizab pantai atau kawasan pantai; (b) perintah certiorari untuk membatalkan keputusan responden dalam membatalkan tawaran memberi milik tanah itu; dan (c) perintah mandamus yang memaksa responden menyempurnakan penyediaan dan mengeluarkan dokumen hak milik kepada pemohon dalam tempoh satu bulan.

Diputuskan, menolak permohonan:

(1) Pemberian milik tanah negeri di bawah s 9 Ordinan Tanah Sabah ('Ordinan') adalah tidak wajib tetapi adalah mengikut budi bicara. Responden bertindak mengikut budi bicaranya untuk membatalkan tawaran memberi milik tanah itu mengikut arahan atau keputusan khusus Kabinet Memandangkan s 9 Ordinan hanya mengenakan budi bicara ke atas responden untuk memberi milik tanah dan bukan kewajipan, budi bicara tersebut tidak tertakluk kepada perintah mandamus. Oleh itu, permohonan pemohon untuk perintah mandamus adalah tanpa merit. Pembatalan itu dilakukan mengikut s 9 Ordinan dan Kaedah-Kaedah Tanah Sabah dan tidak bertentangan dengan peraturan keadilan semula jadi. Doktrin jangkaan sah tidak terpakai kepada kes ini dan tidak boleh mengatasi peruntukan berkanun nyata Ordinan dan Kaedah-Kaedah Tanah Sabah (lihat perenggan 64, 67 & 70).

(2) Keputusan Kabinet untuk membatalkan tawaran untuk memberi milik tanah kerana tanah itu mungkin atau perlu untuk dirizabkan bagi tujuan awam adalah tidak terlalu tidak munasabah sehingga tiada pembuat keputusan atau pihak berkuasa boleh buat. Oleh itu, keputusan responden untuk menggunakan budi bicaranya di bawah s 9 Ordinan untuk membatalkan tawaran memberi milik tanah mengikut keputusan atau arahan Kabinet adalah mengikut undang-undang dan sah. Melainkan dan sehingga keputusan Kabinet telah dibatalkan atau diketepikan oleh mahkamah, keputusan responden adalah tetap (lihat perenggan 81).]

Cases referred to

Abdulah @ Abdullah Nasib Mohd Noor & Ors v Penolong Pemungut Hasil Tanah Beaufort [2015] MLJU 1016; [2015] 1 LNS 589, HC (folld)

Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd [1996] 2 MLJ 12, FC (refd)

Borneo Samudera Sdn Bhd v Ina Yapp Pui Vun & Anor [2016] MLJU 1752; [2017] 1 LNS 728, HC (refd)

Dr Lourdes Dava Raj a/l Curuz Durai Raj v Dr Milton Lum Siew Wah & Anor [2020] 5 MLJ 185; [2020] 9 CLJ 192, FC (refd)

Evergreen Frontier (M) Sdn Bhd v The Director of Lands and Surveys, Sabah &

Anor [2005] 2 MLJ 644, HC (refd)
Gula Sabah Sdn Bhd v Director of Lands and Surveys Department, Sabah [2018] MLJU 1489; [2019] 10 CLJ 565, HC (refd)
Hassnar B Hj M P Ebrahim v Safar Untung & Ors [2021] MLJU 513; [2021] 1 LNS 124, HC (folld)
Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi K Perumal [2001] 2 CLJ 525, FC (refd)
Lim Fong Tsin & Ors v The Assistant Collector of Land & Ors [1997] MLJU 484; [1997] 1 LNS 7, HC (refd)
Minister of Home Affairs, Malaysia v Persatuan Aliran Kesedaran Negara [1990] 1 MLJ 351, SC (refd)
Mohamad Rambli bin Kawi v Superintendant of Lands Kuching [2010] 8 MLJ 441, HC (refd)
North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Pengarah Tanah dan Galian Terengganu [2010] MLJU 1988; [2010] 3 MLRA 3728, CA (refd)
Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian, Selangor & Anor [2016] 2 MLJ 495, CA (refd)
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, FC (refd)
Rajesh Datuk Yusof v Director of Lands and Surveys, Sabah [2005] MLJU 376; [2005] 8 CLJ 566, HC (refd)
Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)
Sa-Mal (Sabah) Corp Sdn Bhd v Director of Lands and Surveys, Sabah [1994] MLJU 398; [1994] 3 CLJ 229, HC (refd)
Sykt Perniagaan United Aces Sdn Bhd v Majlis Perbandaran Petaling Jaya [1997] 1 MLJ 394, FC (refd)
Tenaga Nasional Bhd v Majlis Daerah Segamat [2022] 2 MLJ 119; [2022] 2 CLJ 497, FC (refd)
The State Government of Sabah & Ors v Clarence Chiuh Ken Loong & Ors [2017] 3 MLJ 127, CA (refd)
Workon Sdn Bhd v The Director of Lands & Surveys [1999] 4 MLJ 177, HC (refd)

Legislation referred to

Federal Constitution art 13
Land Ordinance (Cap 68) ss 4, 5, 8, 9, 26, 88
Land Rules r 2, 2(4), (6)
National Land Code ss 40, 42, 76, 78, 78(3)

Chung Jiun Dau (Chung & Assoc) for the applicant.
Dk Noranisah Pg Hassanel (Sabah State Attorney General's Chambers) for the respondent.

Leonard Shim JC:

[1] This is the hearing of the substantive application for judicial review of the respondent's decision dated 7 February 2021 to revoke the offer to alienate a parcel of land at Kg Lok Batik in the district of Tuaran. The reliefs sought by the applicant are as follows:

(a) a declaration that the parcel of land measuring around ten hectares which is the subject matter of the offer to alienate land dated 7 February 2020 made by the respondent to the applicant is not within any foreshore reserve or foreshore area;

(b) an order of certiorari to remove into this honourable court and quash forthwith the decision of the respondent to issue the letter dated 8 January 2021 to revoke the offer to alienate land dated 7 February 2020;

(c) an order of mandamus compelling the respondent to complete the preparation of and to issue the document of title Country Lease 045393173 to the applicant within one month;

(d) costs; and

(e) any other or further relief as the court deems fit.

[2] The grounds of this application are as follows:

(a) that the decision of the respondent is unlawful, null and void;

(b) that procedural unfairness operated and impinged upon the decision of the respondent and the decision was made in breach of the principles of natural justice in that:

(i) no opportunity to be heard was afforded to the applicant even though the applicant would be adversely affected by any decision to revoke the offer to alienate land;

(ii) the applicant was deprived of the opportunity to inform the respondent that the land under the offer to alienate land dated 7 February 2020 did not fall within any foreshore reserve nor any foreshore area;

(iii) the decision making process of the respondent was unfair and in breach of the rules of natural justice, as the respondent considered a complaint letter dated 15 October 2020 written by the solicitors for Tekun Cemerleng Sdn Bhd alleging that the land under the offer to alienate land dated 7 February 2020 was within a foreshore reserve without giving any opportunity to the applicant to rebut this incorrect allegation of fact; and

(iv) the respondent did not apply his mind to the evidence, facts, laws and issues before making the decision to revoke the offer to alienate land dated 7 February 2020.

(c) further or in the alternative, that the decision is irrational, unreasonable and/or unlawful and the respondent took into account irrelevant considerations and failed to take into account relevant considerations in:

(i) failing to consider that the land under the offer to alienate land dated 7 February 2020 does not fall within any foreshore reserve or foreshore area;

(ii) failing to consider and ignoring the report forwarded to the respondent by the Assistant Collector of Land Revenue, Tuaran under a letter dated 14 December 2020 which had explicitly stated that the Land under the offer to alienate land dated 7 February 2020 falls outside any foreshore reserve or foreshore area;

(iii) the respondent's decision to revoke the offer to alienate land dated 7 February 2020 was not based on any factual information nor any information gathered from any site inspection;

(iv) the respondent's basis to revoke the offer to alienate land dated 7 February 2020 was irrational, unreasonable and/or unlawful in that the land was never part of any foreshore reserve;

(v) the respondent failed to re-consider his decision to revoke even after the applicant's solicitors wrote to him to inform him that the land was not part of any foreshore reserve or foreshore area and attaching a survey plan prepared by a licenced surveyor confirming that fact; and

(vi) the respondent failed to consider that the applicant would have had incurred numerous expenses in addition to payment of the premium for the land.

(d) the respondent acted unlawfully in that the respondent stated that he was directed to make the decision to revoke the offer to alienate land dated 7 February 2020 and failed to exercise his own discretion; and

(e) the applicant has a legitimate expectation that everything was in order and the issuance of the title deed for the land was being processed and that the title deed would be issued to the applicant for a total premium of RM3,459,000.

BRIEF BACKGROUND FACTS

[3] The applicant had applied for a parcel of land of 15 hectares at Kg Lok Batik in the District of Tuaran in the State of Sabah on or about 11 January 2019. See exhs N1 and N2 in the affidavit verifying facts relied on.

[4] The land office personnel went through the procedures in respect of the applicant's land application and the Secretary of Natural Resources granted approval in respect of the applicant's application by a letter dated 28 January 2020 to the respondent: see exh N4.

[5] Subsequently the respondent issued an offer to alienate land dated 7 February 2020 to the applicant ('offer to alienate land') for a parcel of land not exceeding ten hectares ('the land') which the applicant accepted and made payment of RM2,595,000. See exhs N6 and N7.

[6] The applicant also paid the security deposit to the Sabah Surveyors Board for the engagement of the licensed firm of surveyors, Juruukur Wahdah, to undertake the survey work for the issuance of the title deed to the land: see exhs N8 and N9.

[7] Juruukur Wahdah applied for the issuance of the surveying permit (known as RSP or registered survey paper): see exh N10. The Lands and Surveys Department then issued the survey permit dated 16 March 2020 to Juruukur Wahdah: see exh N11.

[8] The applicant wrote a letter dated 29 May 2020 to the then Assistant Minister to the Chief Minister's Department requesting his assistance in requesting for a reduction in the premium for the land as the premium in the offer to alienate land was calculated based on 15 hectares whilst only an area of around ten hectares was approved: see exh N12.

[9] The applicant's request for the reduction in the premium stated in the offer to alienate land was approved: see exhs N13 and N14. In effect, the applicant had paid more than 75% of the premium payable for the land based on the reduced premium.

[10] Unbeknown to the applicant, the legal firm of Lee & Kong representing Tekun Cemerlang Sdn Bhd wrote a letter dated 15 October 2020 to object to the alienation of the land to the applicant: see exh N18. The allegation made in the letter was that the land is part of an existing foreshore reserve. The letter did not enclose any evidence in support of its allegation. An application for judicial review was made by Tekun Cemerlang Sdn Bhd to quash the decision to

alienate the land to the applicant. The application for judicial review by Tekun Cemerlang Sdn Bhd was withdrawn on 22 February 2021 after the offer to alienate land was revoked by the respondent in accordance with the decision of the cabinet.

[11] The Lands and Surveys Department issued a letter dated 6 November 2020 to the Assistant Collector of Land Revenue, Tuaran informing of an instruction to defer the review of the survey plan prepared by the licensed surveyor, Juruukur Wahdah: see exh N15.

[12] The applicant was not informed about the allegation that the land is part of an existing foreshore reserve nor was the applicant informed about the decision to defer the review of the survey plan which had been prepared.

[13] On or about 29 November 2020, a field inspection was carried by the Assistant Collector of Land Revenue, Tuaran together with several district surveyors from the Lands and Surveys Department. After the field inspection, a report was prepared by the Assistant Collector of Land Revenue, Tuaran and given to the respondent: see exh N22. In the report, it was stated that the land was located outside the foreshore reserve and that the allegations made in the complaint letter dated 15 October 2020 were unfounded. In the report, it was also stated that the offer to alienate land dated 7 February 2020 had been issued in accordance with the provisions of the Sabah Land Ordinance.

[14] The applicant was informed that the title deed to the land had already been prepared and was only pending printing out and signing by the relevant officers of the Lands and Surveys Department.

[15] On 22 January 2021, the applicant received the letter dated 8 January 2021 from the respondent revoking the offer to alienate land: see exhs N23 and N24. The stated reason was that the respondent had been directed to revoke to maintain the land as foreshore reserve. The respondent also requested that the applicant make a claim to the State Government of Sabah for the refund of premium paid.

[16] The respondent subsequently revealed that the complaint letter dated 15 October 2020 had been forwarded to the Secretary of Natural Resources and that the Secretary of Natural Resources informed the respondent that the cabinet had met on 25 November 2020 and the respondent was instructed to cancel the offer to alienate land issued to the applicant on the basis that the land is to be maintained as foreshore reserve. See exhs JTU1 and JTU2.

[17] This was unbeknownst to the applicant and the applicant was never informed of the complaint letter nor asked to respond to the allegations contained therein.

[18] The applicant's solicitors wrote a letter dated 6 April 2021 to the respondent enclosing a survey plan dated 6 April 2021 prepared by Juruukur Wahdah showing that the land was not within any existing foreshore reserve. The letter also pointed out, amongst others, that the decision to revoke the offer to alienate land was premised on an incorrect assumption and that the applicant was never consulted and that the applicant demanded that the respondent revoke or cancel his letter dated 8 January 2021 for the revocation of the offer to alienate land: see exh N26.

[19] The respondent did not respond to the applicant's solicitors' letter.

[20] The District Surveyor from the Lands and Surveys Department had issued a letter dated 31 March 2021 to the Sabah Surveyors Board informing that the survey plan prepared and submitted by Juruukur Wahdah had been approved for data. This indicates that the information contained in the surveys conducted by Juruukur Wahdah are accurate and correct: see exh N28.

[21] On clarification sought by the applicant, Juruukur Wahdah confirmed in a letter dated 3 May 2021 that the only reserve in the vicinity of the land is the area described as Kawasan Rekreasi Dan Tepi Pantai Dalit GNS 231/2001. Juruukur Wahdah also confirmed that under the instructions contained in RSP 2020049066, an area of 50 metres above the high water mark towards the land was to be maintained as seashore and that the land did not fall within the reserve area or the seashore area: see exh N29.

CONTENTION OF THE PARTIES

[22] The applicant contends that a factual question arises as to whether the land is located within any existing foreshore reserve as had been alleged in a complaint dated 15 October 2020 made to the respondent. The complaint, made through the legal firm of Lee & Kong (representing Tekun Cemerlang Sdn Bhd), alleged that the land is located 'within the existing foreshore reserve' and that 'being part of the existing foreshore reserve, the purported alienation of the subject land under the said offer issued by (the respondent) is unlawful as being contrary to, inter alia, s 9 of the Land Ordinance': see exh N18.

[23] The complaint by Tekun Cemerlang Sdn Bhd was not brought to the attention of the applicant at the material time, but following this complaint, the Lands and Surveys Department informed the licensed surveyor, Juruukur Wahdah of an instruction to defer the review of the survey plan prepared by

them: see exh N15. Hence the applicant was never given any opportunity to rebut the allegation made in the complaint.

[24] A field inspection was carried by the Assistant Collector of Land Revenue, Tuaran together with several district surveyors from the Lands and Surveys Department on 29 November 2020 in response to the complaint and a report was prepared after the field inspection. The report concluded that the complaint was unfounded and that the land is outside the foreshore reserve. The report was given to the District Surveyor and copied to the respondent by the Assistant Collector of Land Revenue, Tuaran by letter dated 14 December 2020. See exh N22.

[25] The *Gazette* Notification No 253 of 1997 marked N19, Plan No 04123982 marked N20 and *Gazette* Notification No 231 of 2001 marked N21 show the only foreshore reserve in the vicinity of the land. In fact, the stated public purpose in *Gazette* Notification No 253 of 1997 is for a foreshore and recreation park.

[26] The ground survey dated 6 April 2021 which was carried out by Juruukur Wahdah show that the land is not within this reserve: see exh N26. This is also consistent with the Survey Plan No 04133026 which was prepared by Juruukur Wahdah for the issuance of the title deed for the land: see exh N28. This survey plan has been approved by Lands and Surveys Department for survey data purposes.

[27] In the premises the applicant contends that the revocation of the offer to alienate land ought to be quashed accordingly as it is based upon a totally incorrect basis in fact.

[28] The applicant submitted that in interpreting the provisions of the Sabah Land Ordinance and the Land Rules, there is a principle in statutory interpretation that legislation is presumed not to affect or interfere with rights by implication and such legislative intention must be expressed through clear and unambiguous language: see the Federal Court in *Sykt Perniagaan United Aces Sdn Bhd v Majlis Perbandaran Petaling Jaya* [1997] 1 MLJ 394.

[29] This is reinforced by art 13 of the Federal Constitution which provides:

> 13 *Rights to property*
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> (1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[30] The applicant contends that by virtue of the respondent issuing the offer to alienate land to the applicant which the applicant had accepted, there would be a binding contract: see for example, *Workon Sdn Bhd v The Director of Lands & Surveys* [1999] 4 MLJ 177.

[31] Thus, the applicant submit that the applicant would have rights which would constitute property which attract the fundamental protection of art 13 of the Federal Constitution: see for example, *Mohamad Rambli bin Kawi v Superintendant of Lands Kuching* [2010] 8 MLJ 441.

[32] The above interpretation of the relevant provisions of the Land Ordinance and the Land Rules is consistent with *Sa-Mal (Sabah) Corp Sdn Bhd v Director of Lands and Surveys, Sabah* [1994] MLJU 398; [1994] 3 CLJ 229. The court looked into the issue whether the Chief Minister through the Secretary of Natural Resources can direct the Director of Lands and Surveys to alienate land to a party when that land has already been approved to another party. The court held:

> ... It ought to be noted that *once the offer to alienate the land had been accepted by the Ko-Nelayan on 3 November 1982, the Director of Lands & Surveys is bound to issue the title to the said land to Ko-Nelayan save when Ko-Nelayan fail to meet or observe the terms and conditions of the offer to alienate or to complete all payments or to sign the draft title. Nobody, including the then Chief Minister of Sabah, could deprive Ko-Nelayan the said land that had been lawfully approved to KoNelayan save with the consent of Ko-Nelayan or through the process of the law.* The letter of the appellant, dated 20 December 1983, to the then Chief Minister of Sabah, is definitely not a lawful means of depriving Ko-Nelayan of 50 acres of the said land that had already been approved to Ko-Nelayan. When the appellant enlisted the help of the then Chief Minister of Sabah, they did not, in their said letter dated 20 December 1983, reveal to the said Chief Minister that the land had already been approved to Ko-Nelayan but merely state that the 50 acres were State land being used by Ko-Nelayan for its fish project which, according to the appellant, was no longer suitable for the project. The appellant had to enlist the said Chief Minister's help because, obviously, their application for the 50 acres could not be entertained by the land office since the 50 acres of land had already been approved to Ko-Nelayan. *Any act, after the approval of the said land to Ko-Nelayan, without the consent of Ko-Nelayan cannot be lawful.* (Emphasis added.)

[33] It is submitted by the applicant that at the time of the decision in *Sa-Mal (Sabah) Corp Sdn Bhd v Director of Lands and Surveys, Sabah*, s 9 of the Land Ordinance had referred to 'any general or special direction of the Minister'. The 'Minister' refers to the Chief Minister of Sabah. Section 9 has since been amended to read 'the Cabinet' in place of 'the Minister'.

[34] In *Lim Fong Tsin & Ors v The Assistant Collector of Land & Ors* [1997] MLJU 484; [1997] 1 LNS 7, Richard Malanjum J (as he then was) endorsed

the views of the court in *Sa-Mal (Sabah) Corp Sdn Bhd v Director of Lands and Surveys, Sabah* and stated:

> Thus, as can be seen from the relevant provisions quoted above, a land application by itself does not confer anything to the applicant. In fact r 2(4) of the Rules is very clear on the status of a land application prior to its approval. And s 9 of the Ordinance gives the Director the discretion on the alienation of State land subject of course to any general or special direction of the Minister. To that extent I agree with the view expressed by Ian Chin J in the case of *Sa-Mal (Sabah) Corp Sdn Bhd v Director of Lands and Surveys, Sabah* (OM No K 4 of 1992) (unreported). *However, I do not think the discretion given to the Director therein should be construed as unfettered. 'Every legal [16] power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene'.* per Gopal Sri Ram JCA in *Datuk Bandar Kuala Lumpur v Zain Azahari bin Zainal Abidin* [1997] 2 MLJ 17; [1997] 2 AMR 1671 at p 1692.
>
> Nevertheless, it is for the aggrieved party to challenge the exercise of such a discretion and for the Director, being the decision-maker in this case, to meet it by adducing relevant and admissible evidence.
>
> Reverting therefore to the present case it is obvious that the plaintiffs had only applied for the subject lands — para 5 of the agreed facts. And by paras 15 and 17 thereof it can be inferred that a decision has been made not to approve their land applications. *And the fact that title deeds have been issued to most of the original applicants indicates no less than that the Director has exercised his discretion. Thus, with their land applications not being approved and strictly based on the provisions of the Ordinance and in particular r 2(4) of the Rules, the plaintiffs appear to have not acquired 'any right whatsoever' in the subject lands.* (Emphasis added.)

See also *Evergreen Frontier (M) Sdn Bhd v The Director of Lands and Surveys, Sabah* [2005] 2 MLJ 644.

[35] The above approach was also taken in *Rajesh Datuk Yusof v Director of Lands and Surveys, Sabah* [2005] MLJU 376; [2005] 8 CLJ 566, Linton Albert J (as he then was) stated in referring to the respondent's powers under s 9 of the Land Ordinance (at p 569):

> The power of the first defendant to alienate land under s 9(1) of the Sabah Land Ordinance (Cap 68) includes the power to 'impose special conditions' to be set out in the title'. The condition relating to compensation to the second defendant is not set out in the title which has since been issued and registered in the name of the plaintiff. The only sensible conclusion is that the first defendant is not clothed with the power to impose that condition. It stands to reason, that such a condition stemming as it did from the *exercise of a power not expressly provided for would be ultra vires the Sabah Land Ordinance (Cap 68) and the Land Rules and therefore void.* (Emphasis added.)

[36] This approach is also taken by the courts in respect of other provisions of the Land Ordinance. For example, in *Borneo Samudera Sdn Bhd v Ina Yapp Pui Vun & Anor* [2016] MLJU 1752; [2017] 1 LNS 728, Ravinthran Paramaguru J (as he then was) held that:

> [13] *The ACLR is the highest ranking land officer in a district.* As I noted earlier, he is vested with quasi judicial power to settle various disputes relating to land administration. However, his *powers must be exercised within the ambit of the Land Ordinance (Sabah Cap 68)* ... He did make a decision but it is not a lawful decision as there is no provision in the Land Ordinance (Sabah Cap 68) giving such a power to the ACLR to order a land owner or a beneficial land owner as in this case to keep any part of his land open to the public unless it is an order pursuant to a right of way application. Since the parties are agreed that the 'order' was not issued in a proper land inquiry, it must be deemed that the so-called 'order' of the ACLR is ultra vires the Land Ordinance (Sabah Cap 68). I shall therefore quash and set aside the last paragraph of the decision ...

[37] It appears that the respondent did not seek any legal opinion before cancelling or revoking the offer to alienate land to the applicant and the respondent had misdirected himself on the law as well as on the facts. The applicant contends that the respondent and/or the cabinet had no powers under the Land Ordinance or the Land Rules to revoke or cancel the offer to alienate land as was done and hence the revocation or cancellation was ultra vires and void.

[38] Assuming the respondent has a discretion to cancel or revoke an approved land application (which is denied), the applicant contends that the respondent is still required to comply with the principles of natural justice.

[39] For completeness, the applicant contend that the respondent also cited the so-called Draft Dalit Local Plan and suggested that a large portion of the land is within the 'Protected Conservation (Development Prohibited)' zone in what the respondent described as the 'current Draft Dalit Local Plan'. The respondent also suggested that tourism activities are prohibited within this area.

[40] The applicant contends that it is not bona fide for the respondent to now attempt to use the so-called Draft Dalit Local Plan to justify the revocation of the offer to alienate land because this was not the stated reason for the revocation, nor was it the reason used by the cabinet.

[41] In any event, the applicant contends that the applicable zoning of an area only provides what are the permitted uses of land or buildings or what is permitted to be developed within that area. It has no relevance whether a parcel of land within that area can be alienated or not. For example, even if an area is

zoned for a recreation park usage only, a parcel of land can still be alienated. It is not uncommon for example where portions of alienated land are not permitted to be developed. Further, it is noted that the public consultation provisions in the Town and Country Planning Ordinance does envisage that variations or changes can be made to a draft scheme before approval is given by the Yang di-Pertua Negeri.

[42] The respondent contends that the wordings in the letter of offer to alienate land dated 7 February 2020 issued by the respondent to applicant as exhibited in 'N6' of applicant's affidavit ('the offer to alienate land') expressly stated that the offer to alienate land was subject to the provisions and conditions contained in the Land Ordinance (Sabah Cap 68).

[43] Alienation of state land is regulated by the Land Ordinance (Sabah Cap 68) ('the Land Ordinance') and Land Rules (GN 505 of 1930) ('the Land Rules') and respondent's discretionary power to alienate state land subject to any general and special direction of the cabinet is provided in s 9 the Land Ordinance.

[44] The relevant provisions of the Land Ordinance are reproduced below as a guide and reference to the respondent's arguments in subsequent paragraphs:

> 4 of the Land Ordinance:
>
> 'alienate' means to lease, or otherwise dispose of State land on behalf of the Government in consideration of the payment of such rent and of such premium, if any, as may be required;
>
> 'State land' means all lands which have not been and may not hereafter be reserved for any public purpose, or which have not been and may not hereafter be leased or granted to or are not and may not hereafter be lawfully occupied by any person, and includes all lands which, at the commencement of this Ordinance, may have become or which hereafter may become forfeited by reason of any breach of the conditions on which the same have been lawfully occupied, or which have been or may hereafter be surrendered to the Government by the lawful owner thereof;
>
> 5 Government property in land
>
> The entire property in and control of State land or land reserved for a public purpose is and shall be vested solely in the Government.
>
> 9 Alienation of State land
>
> (1) Subject to any general or special direction of the Cabinet the Director may alienate State land on such terms or in such manner as is authorised by this Ordinance and may also impose special conditions in respect thereof to be set out in the title.
>
> (2) In particular such conditions may specify the particular product or class of products which or which alone is to be cultivated, and may forbid the cultivation of any particular product or class of products.

88 No title or claim to land valid unless registered

No new title and no dealing with, claim to or interest in any land except land still held under native customary tenure without documentary title shall be valid until it has been registered in accordance with the provisions of this Part.

[45] It is imperative to note that in ss 4 and 5 of the Land Ordinance, the property and control of state land shall vest solely in the government and pursuant to s 8 of the Land Ordinance, no claim or interest in any land shall be valid until it has been registered. Further in r 2(4) of the Land Rules provides that, 'No payments made under subrule (3) shall confer any right whatsoever to the land applied for and acceptance of any such payment shall not constitute any undertaking that the application will be approved'.

[46] In *Borneo Housing Mortgage Finance Bhd v Time Engineering Bhd* [1996] 2 MLJ 12 Edgar Joseph Jr FCJ in delivering the judgment of the court said:

However, s 88 which emphasises the paramount importance of registration in accordance with Part V of the Land Ordinance as a condition precedent for the recognition of the validity of title or dealing or claim to or interest in any land does *imply the basic Torrens concept that title to or interest in land vests and divests only upon registration.* (Emphasis added.)

[47] Based on the provisions in the Land Ordinance and Land Rules, it is submitted by the respondent that the land is a state land and the respondent has all the right empowered to him in s 9 of the Land Ordinance to issue the revocation. It is further submitted by the respondent that prior to the completion of the registration of the land, the applicant cannot assert any right over the land, even if prior approval had been granted, in regards to its alienation.

[48] To support their contention above, the respondent referred to the Court of Appeal case of *North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Pengarah Tanah dan Galian Terengganu* [2010] MLJU 1988; [2010] 3 MLRA 3728 ('the *North East Plantations* case') where in the majority decision, Justice Abu Samah JCA (as he then was) said as follows:

[25] Upon a close scrutiny of the Code, it appears that there is *no express provision therein which prohibits the state authority to revoke or withdraw prior approval of alienation of state land before the registration of a register document of title.* The wording of s 78(3) of the Code tends to suggest that such provision is not necessary. The need to revoke has not arisen as the land is still state land by virtue of the said section. The contention that the state authority cannot revoke the approval for alienation of state land once approved goes against the grain of s 78(3) itself. The power to revoke is implicit in that subsection itself. It is absurd to say that the state authority has lost control over the land after alienation when s 78(3) plainly states

A that it is still its land until registration. (Emphasis added.)

Further, this Court of Appeal ruling by the majority was affirmed by the apex court on appeal by the aggrieved appellant and the learned President of the Court of Appeal, Alauddin bin Mohd Sheriff (as he then was) had this to say:

B (1) The power to refuse the payment submitted by the appellant was impliedly stated under s 78(3) of the NLC. That section clearly provided that *so long as the land was not registered in the appellant's name, it was still owned by the state government. This accordingly implicitly meant that the state government had the power to revoke the previous approval and reject the payment made by the appellant …*

C (4) *Just because the appellant's application for alienation of land was approved did not mean that the state government was bound contractually and that it could not decide to revoke the approval given.* According to the Federal Constitution (Ninth Schedule) and *under* s 40 of the NLC*, 'land' belonged to the state and as the owner it had the right to make any decision or take any action that was thought appropriate and reasonable.*
D Whether the *act of revoking an approval was appropriate constituted a separate issue and could not nullify the state government's right as the owner of the land.* (Emphasis added.)

For ease of reference, s 78 of the National Land Code is reproduced below:

E 78 How alienation is effected

(1) The alienation of State land under final title shall be effected in accordance with the provisions of Chapter 3.

(2) The alienation of State land under qualified title shall be effected in accordance with the provisions of Chapter 2 of Part Eleven.

F (3) The alienation of State land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to sub-section (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State land until that time.

G

[49] The *North East Plantations* Case was also referred in the Court of Appeal case of *Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian, Selangor & Anor* [2016] 2 MLJ 495 where Abang Iskandar JCA (as His Lordship then
H was) said as follows:

[21] We are of the respectful view that a few important legal propositions have been forwarded by learned counsel for the respondents. The fact that the NLC vests the power pertaining to all state land within the state, in the SA is beyond question, in view of s 40 of the NLC. The further fact that the SA has the power to alienate state
I land is contained in s 42 of the NLC and that such power be exercised in line with the provisions as contained under s 76 of the NLC. According to s 78 of the NLC the alienated state land remains as state land until it is finally registered in the name of the person to whom it is finally transferred as evidenced on the register of land titles at the land office. For the purpose of this appeal, those positions, in our view, are not in serious dispute. The next issue is whether the SA has the power to revoke

the order of alienation already granted, but which alienation has not been completed.

[22] That would necessarily bring us to the case of *North East Plantations Sdn Bhd v District Land Administrator, Dungun & Anor* [2010] MLJU 1988; [2010] MLJU 413; [2011] 2 CLJ 392. In this regard, we would allude to the majority decision of the Court of Appeal in a speech by Justice Abu Samah JCA (as he then was) where he had said as follows:

> [25] Upon a close scrutiny of the Code, it appears that there is no express provision therein which prohibits the state authority to revoke or withdraw prior approval of alienation of state land before the registration of a register document of title. The wording of s 78(3) of the Code tends to suggest that such provision is not necessary. The need to revoke has not arisen as the land is still state land by virtue of the said section. *The contention that the state authority cannot revoke the approval for alienation of state land once approved goes against the grain of s 78(3) itself. The power to revoke is implicit in that subsection itself. It is absurd to say that the state authority has lost control over the land after alienation when s 78(3) plainly states that it is still its land until registration.*

[24] Premised on the above decision by the apex court in the *North East Plantation*'s case we are bound in *that the SA has the power to revoke an order of alienation on the proper construction of s 76(3) of the NLC as alluded to by the learned apex court justices. Although there are no express words employed in the NLC providing for such a revocation power,* the apex court had decided that the *SA had the power of revocation by necessary implication.* It was an *implicit power* which, *does not need to be expressly provided for.* To that extent, *the position on revocation of an order of alienation has therefore become settled law.* (Emphasis added.)

[50] Although there are no such detailed provisions for alienation of state land in the Land Ordinance as provided in s 78 of the National Land Code, the respondent contends that the principle in the *North East Plantation*'s case in essence is applicable to the present case with reference to ss 9 and 88 of the Land Ordinance and r 2(4) of the Land Rules respectively.

[51] Also in *Gula Sabah Sdn Bhd v Director of Lands and Surveys Department, Sabah* [2018] MLJU 148, per Celestina Stuel Galid JC (as Her Ladyship then was), in her judgment said:

> [34] ... I took note of the submission by the learned counsel for the appellant that the present case is distinguishable from the cases which dealt with s 9 of the Ordinance as there was already a letter of offer and a draft title issued. The short answer to this is that that it was so did not fetter the discretion of the respondent not to alienate the land and only registration under s 88 of the Ordinance would vest interest in the applicant — see *The State Government of Sabah & Ors v Clarence Chiuh Ken Loong & Ors*.

[52] Reverting back to the present case, although there was an offer to alienate land, no registration has been effected and no document of title has

A been issued to the applicant. Therefore, in view that there are provisions expressly provided for alienation of state land (s 9 of the Land Ordinance and r 2 of the Land Rules) and in the absence of any express provision in the Land Ordinance to prohibit the revocation by the respondent, it is submitted by the respondent that the land remained as state land and respondent had acted
B within the power accorded to him in s 9 of the Land Ordinance in revoking the offer to alienate land as per the direction of the cabinet.

[53] Further, the revocation by the respondent stem from the direction of the
C cabinet as stated in para 10 of the respondent's affidavit in opposition and therefore it is submitted by the respondent that the respondent had acted within the powers empowered to him in s 9 of the Land Ordinance ie, to exercise his power as directed by the cabinet. As such, the respondent had acted rationally, reasonably and lawfully within his capacity as the Director of Lands
D and Surveys.

[54] In *Workon Sdn Bhd v The Director of Lands & Surveys, Sabah* [1999] 4 MLJ 177, Richard Malanjum J (as His Lordship then was) considered the application of s 9 of the Ordinance in the context of an application for
E mandamus to compel the Director of Lands & Surveys to issue the document of title to the applicant. The applicant therein had been given an approval to register a draft title of a piece of land, which offer was accepted by the applicant. The applicant had also paid the necessary premium. His Lordship dismissed the application, inter alia, holding as follows:

F
> Meanwhile, I have noted the view expressed by the learned counsel for the applicant on the interpretation of s 9 of the Ordinance as a possible answer to the preceding point. However, to agree with him would tantamount to saying that once a letter of offer is issued there is no reversal and that a successful applicant is in good a position as a registered owner. That I think is not the intention of the Ordinance. Section 88
G is clear on that.

[55] Further in *North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor*, Abu Samah Nordin JCA (majority) has in his judgment explained extensively on applicability of the doctrine of legitimate expectation
H to alienation of land which was also affirmed by the Federal Court. For ease of reference, the relevant paragraphs by His Lordship are reproduced below:

> [34] What the appellant is claiming here is not just a right to a fair hearing before the State Authority revoked its approval of alienation of the said land. *Its complaint is not confined to procedural impropriety* on the part of the State Authority. It goes beyond
I that. *It expects to get the 'substance' of the expectation itself, namely, the qualified titles to the said lots once it had shown that it was deprived of its legitimate expectation.*
>
> [35] Decided cases however had shown that the *doctrine of legitimate expectation cannot be applied indiscriminately in all cases.* It does not apply to every single case of denial of a fair hearing or opportunity to make representation before a decision is

made. Thus in *Council of Civil Service Unions & Ors v Minister for Civil Service*, the House of Lords held that the appellants had *no legitimate expectation to prior consultation before the minister varied the terms and conditions of service of the staff* to the effect that they would no longer be permitted to belong to national trade unions on the grounds of national security. Lord Diplock at p 412 said:

> National security is the responsibility of the executive Government ... It is par excellence a non-justiciable question. The judicial process is totally inept to deal with the sort of problems which it involves.

[43] *In our judgment, legitimate expectation cannot and should not, override the express statutory provisions of the Code.* The appellant here is in a worse situation. *It has no legitimate expectation that titles would be issued to it when the State Authority had validly revoked the approval of alienation of the said lots. At the time of revocation, the said lots were still State Land.* (Emphasis added.)

[56] And in the Court of Appeal case of *The State Government of Sabah & Ors v Clarence Chiuh Ken Loong & Ors* [2017] 3 MLJ 127, the court also dealt with the issue of whether the plaintiffs therein had legitimate expectation to be issued with title deeds for the subject lands pursuant to the letters of offer issued to them. The plaintiffs had also paid 50% of the premium payable for the lands. Despite that, the Lands and Surveys Department subsequently informed the plaintiffs that the registered survey plans for their land applications could not be issued because the lands were within the Forest Reserve of Madai Baturong. The Court of Appeal allowed the appeal, inter alia, holding as follows:

> [24] ... The *alienation of state land is regulated by the Sabah Land Ordinance which lays out clear provisions on the process of alienation of land in the state of Sabah.*
>
> [25] It is plain and clear that s 12 of the Sabah Land Ordinance and r 2 of the Sabah Land Rules do not recognise mere application for land and any payment made pursuant thereto as an undertaking that, the application for land has been approved ... *And under s 88, it is clearly provided that any interest in land shall be valid only upon registration of title* ...
>
> [26] ... *The doctrine of legitimate expectation does not apply and cannot override the legal provision as clearly stipulated under the Sabah Land Ordinance* ... (Emphasis added.)

EVALUATION AND FINDINGS

[57] It is undisputed that the offer to alienate the land was revoked by the respondent because of the specific direction or decision from the cabinet as evidenced in exh JTU2 of encl 11 to revoke the said offer.

[58] Section 9 of the Sabah Land Ordinance provides:

> 9 *Alienation of State land*

(1) *Subject to any general or special direction of the Cabinet* the Director may alienate State land on such terms or in such manner as is authorised by this Ordinance and may also impose special conditions in respect thereof to be set out in the title.

(2) In particular such conditions may specify the particular product or class of products which or which alone is to be cultivated, and may forbid the cultivation of any particular product or class of products. (Emphasis added.)

[59] The respondent acted in accordance with the said cabinet decision to revoke the offer to alienate land. However, the cabinet who are the main decision maker in the case is not made a party to this application for judicial review. The respondent was carrying out the specific direction of the cabinet under s 9 of the Sabah Land Ordinance when revoking the offer to alienate the land. There is no application to quash or set aside the said decision of the cabinet. Hence, the decision of the cabinet stands. It is against the principle of natural justice for this court to question the decision of the cabinet when they are not made a party to this proceeding and not given an opportunity to be heard in this court regarding the decision making process pertaining to decision to revoke the offer to alienate the land. In *Dr Lourdes Dava Raj a/l Curuz Durai Raj v Dr Milton Lum Siew Wah & Anor* [2020] 5 MLJ 185; [2020] 9 CLJ 192, the Federal Court held:

[57] Dr Lourdes although having had the opportunity to defend himself before the MMC, was not made a party in the judicial review proceedings before the High Court and Court of Appeal, and this failure to add him as a party precluded him from articulating his own defence before the courts. He was excluded to his detriment. We have stated above that the right to be heard is not restricted to merely domestic inquiry proceedings but extends to all available avenues of appeal. Dr Lourdes not being joined as a party at the High Court and Court of Appeal levels, is a matter of serious detriment to him, particularly when the Court of Appeal made a finding of guilt on his part. Dr Lourdes is without question an affected party, and thus pursuant to O 53 r 4(2) of the RC 2012, he was entitled to notice of the judicial review proceedings so that he could be heard in his own defence

...

[59] The facts here are entirely different. This is a case involving a breach of natural justice, rather than res judicata or issue estoppel. This in turn is because the adjudication of the substantive dispute was conducted in the absence of a primary actor. It is again different from a default situation because Dr Lourdes was expressly excluded from the judicial review proceedings. This amounted to a deliberate act to preclude him from defending himself. This takes it out of the purview of the doctrine of res judicata, issue estoppel and abuse of process. We are therefore of the view that *Dato' Sivananthan* is distinguishable from the facts of this appeal.

...

[61] Secondly, on the appeal proper, we unanimously decided that the order of the Court of Appeal was a nullity because the appellant was not given the right to be heard.

[60] Recently the principle in *Dr Lourdes Dava Raj*'s case was followed in *Tenaga Nasional Bhd v Majlis Daerah Segamat* [2022] 2 MLJ 119; [2022] 2 CLJ 497 where the Federal Court held:

> [19] However, the State Authority of Johor who made the policy to adopt the 'improved value' method was not made as a party in the originating motion and therefore, a non-party before the court. The appellant only named the Majlis Daerah Segamat, which is the local authority for the local authority area of Segamat, as the sole respondent.
>
> [20] The general rule is that the court has no jurisdiction over any person other than those brought before it and no order can be made for or against or bind a non-party before a proceeding.
>
> ...
>
> [25] The importance for the court to adhere to the principle of natural justice in the decision-making process was also emphasised recently in the Federal Court case of *Nivesh Nair Mohan v Dato' Abdul Razak Musa, Pengerusi Lembaga Pencegahan Jenayah & Ors* [2021] 5 MLJ 320; [2021] 8 CLJ 163. In this case, the Federal Court unanimously set aside the previous order of the Federal Court which was made as a result of a material breach of natural justice in the course of hearing and the decision-making process. In this regard, Tengku Maimun Tuan Mat CJ held as follows:
>
> > [37] ... the majority judgment was clearly formulated on a crucial point which was not put to parties in breach of the rules of natural justice leaving them with no means of redress. As such, a serious miscarriage of justice has occasioned, in particular to the detenu as that crucial point was decided against him.
> >
> > [38] For the foregoing reasons, we found that ground (1)(a) of the review motion was of merit and on that point alone, we were satisfied that the prior order of this court dated 19 February 2021 ought to be set aside and the appeal reheard. See also *Datuk Seri Anwar Ibrahim v Government of Malaysia & Anor* [2020] 4 MLJ 133; [2021] 6 CLJ 1, *Dr Lourdes Dava Raj a/l Curuz Durai Raj v Dr Milton Lum Siew Wah & Anor* [2020] 5 MLJ 185; [2020] 9 CLJ 192.
>
> [26] Based on the above principles and authorities, it is clear that this court should decline to answer the question on whether the imposition of improved value in State of Johor ultra vires s 129 of the LGA 1976. This is because the State Authority of Johor which is the right party to clarify on this matter was not made as a party in this originating summon. It would be greatly unfair for this court to make any order without considering any facts, materials or submission by the State Authority of Johor in determining the policy opted by them in applying 'improved value' method instead of 'annual value' method in just and proper manner. Any decision of this court on this question would have direct bearing to the policy adopted by the State Authority of Johor.
>
> [27] At the same time, the State Authority of Johor also has a fundamental right to be heard and to defend itself. The State Authority is a prime actor to this question where its policy decision to impose the rate based on 'improved value' method in the State Authority of Johor is being challenged by the appellant and judgment sought against it. The State Authority of Johor has absolute right to explain the legality and

rationale in imposing 'improved value' method in the State of Johor. The court cannot be expected to delve into or examine the appellant's complaint when the State Authority of Johor is a non-party to the originating summons and was not properly brought before the court to respond to the appellant's allegations.

[61] The main issue in this application is whether the revocation of the offer to alienate, the land is within the discretion or power of the respondent under s 9 of the Sabah Land Ordinance ('the SLO'). A number of authorities were referred by the parties to this court. In *Gula Sabah Sdn Bhd v Director of Lands and Surveys Department, Sabah* [2018] MLJU 1489; [2019] 10 CLJ 565, per Celestina Stuel Galid JC (as Her Ladyship then was), the High Court succinctly set out the legal position and principles on the discretionary power under s 9 of the SLO and states as follows:

[18] Section 9 of the Ordinance provides as follows:

(1) Subject to any *general or special direction of the Cabinet* the Director *may alienate State land* on such terms or in such manner as is authorised by this Ordinance and may also impose special conditions in respect thereof to be set out in the title.

(2) In particular such conditions may specify the particular product or class of products which or which alone is to be cultivated, and may forbid the cultivation of any particular product or class of products.

[19] Ian Chin J had the occasion to consider both ss 9 and 41(1) of the Ordinance in the case of *Sa-Mal (Sabah) Corp Sdn Bhd v Director of Lands and Surveys, Sabah* [1994] MLJU 398; [1994] 3 CLJ 229 wherein the issue before the court was whether the decision of the respondent in not issuing the offer to alienate land to the appellant was appealable under s 41(1) of the Ordinance.

[20] In that case, the respondent had offered to alienate some 225 acres of land to one Ko-Nelayan which accepted by paying 25% of the premium payable. A year later, the appellant applied for 25 acres to be excised from the land offered to Ko-Nelayan which was approved by the Secretary of the Natural Resources, Chief Minister's Office. However, the respondent subsequently issued two separate titles in respect of the land offered to Ko-Nelayan. The appellant demanded that the respondent issue them the offer to alienate the said 50 acres. The respondent refused.

[21] His Lordship held that:

> [4] When the respondent (herein) decided not to issue the offer to alienate land to the appellant, the respondent was in fact making a decision not to alienate the land to the appellant. The decision rejecting any application for land is clearly an exercise of the discretion granted by s 9 of the Ordinance. This being the case, the appeal is therefore an appeal against a decision not to alienate state land within the meaning of s 9 aforesaid. The appeal is thus incompetent, it being prohibited by s 41(1)(d) of the Ordinance.

[22] This issue further came up before His Lordship Richard Malanjum CJSS (now CJ of Malaysia) in the case of *Lim Fong Tsin & Ors v The Assistant Collector of Land*

& Ors [1997] MLJU 484; [1997] 1 LNS 7 where the court dealt with two issues namely, the status of a land application under the Sabah Land Ordinance and the authority to approve any land application and to issue title deed thereof.

[23] His Lordship agreed with the decision by Ian Chin J that *s 9 of the Ordinance gives the Director the discretion on the alienation of State land subject to any general or special direction of the Minister.* His Lordship however went on further to note that unless the Director's decision was made for improper motive or unreasonable or such other grounds, the Director's decision pursuant to s 9 of the Ordinance should stand. *On the facts of the case, His Lordship found that the plaintiffs' allegation that there had been a breach of natural justice was without any merit.*

[24] In another case, *Workon Sdn Bhd v The Director of Lands And Surveys, Sabah & Ors* [1999] 4 MLJ 177; [1999] 1 LNS 40, Richard Malanjum J (as His Lordship then was) considered the application of s 9 of the Ordinance in the context of an application for mandamus to compel the Director of Lands & Surveys to issue the document of title to the applicant. The applicant therein had been given an approval to register a draft title of a piece of land, which offer was accepted by the applicant. The applicant had also paid the necessary premium.

[25] His Lordship dismissed the application, inter alia, holding as follows:

> Meanwhile, I have noted the view expressed by the learned counsel for the applicant on *the interpretation of s 9 of the Ordinance as a possible answer to the preceding point. However, to agree with him would tantamount to saying that once a letter of offer is issued there is no reversal and that a successful applicant is in good a position as a registered owner. That I think is not the intention of the Ordinance. Section 88 is clear on that. At best therefore such applicant, as the applicant in this case, may only have a valid contract with the respondent. And that seems to be the view as well of learned counsel for the applicant when he submitted that: 'the state government in effect will be a party to a legally binding agreement'. Thus, there is an alternative remedy in such a situation, namely for the applicant to go for a civil action for breach of contract if at the end of the day the acceptance of the letter of offer comes to nothing. Such a course of action would, I think, be more convenient, beneficial and effective in view of the discretionary nature of s 9 of the Ordinance.* (Emphasis added.)

[26] Although s 9 of the Ordinance was not specifically considered by the Court of Appeal in the case of *The State Government of Sabah & Ors v Clarence Chiuh Ken Loong & Ors* [2017] 3 MLJ 127; [2017] 2 CLJ 379, the court also dealt with the issue of whether the plaintiffs therein had legitimate expectation to be issued with title deeds for the subject lands pursuant to the letters of offer issued to them. The plaintiffs had also paid 50% of the premium payable for the lands. Despite that, the Lands and Surveys Department subsequently informed the plaintiffs that the registered survey plans for their land applications could not be issued because the lands were within the Forest Reserve of Madai Baturong.

[27] The Court of Appeal allowed the appeal, inter alia, holding as follows:

> [24] Having said that, we agree with the submissions of the learned state counsel that there is no basis to apply the law of contract on the facts of the present appeal. The alienation of state land is regulated by the Sabah Land Ordinance

which lays out clear provisions on the process of alienation of land in the state of Sabah.

[25] It is plain and clear that s 12 of the Sabah Land Ordinance and r 2 of the Sabah Land Rules do not recognise mere application for land and any payment made pursuant thereto as an undertaking that, the application for land has been approved ... And under s 88, it is clearly provided that any interest in land shall be valid only upon registration of title ...

[26] The learned JC had erred to have ruled that the plaintiffs had legitimate expectation purely on the two offer letters to alienate lands to the plaintiffs which state clearly that the offer was conditional *upon availability of unencumbered state lands upon survey. The doctrine of legitimate expectation does not apply and cannot override the legal provision as clearly stipulated under the Sabah Land Ordinance* ... (Emphasis added.)

...

[31] Although the respondent did not specifically premise his *decision to cancel the letter of offer on s 9 of the Ordinance,* I am of the considered view that it nevertheless did not detract from the fact *that the respondent was vested with the discretion to do so as shown in the cases cited above.* (Emphasis added.)

[62] In *Hassnar B Hj MP Ebrahim v Safar Untung & Ors* [2021] MLJU 513; [2021] 1 LNS 124, the High Court held:

[16] Section 9 of the Ordinance had been the subject of discussion by the High Court in the following cases, an appreciation of which will be of assistance in the present case:

(i) *Sa-Mal (Sabah) Corporation v Director of Lands and Surveys, Sabah* [1994] 1 MLRH 571

(ii) *Lim Fong Tsin & Ors v The Assistant Collector of Land & Ors* [1997] MLJU 484; [1997] 1 LNS 7; and

(iii) *Workon Sdn Bhd v The Director of Lands & Surveys, Sabah.*

[17] The issue before the court in *Sa-Mal (Sabah) Corp v Director of Lands and Surveys, Sabah* was whether the decision of the respondent in not issuing the offer to alienate land to the appellant was appealable under s 41(1) of the Ordinance.

[18] In answering this issue in the negative, the court held that *the director was in fact exercising his discretion under s 9 of the Ordinance when he decided not to issue the offer to alienate the land to the respondent and thus, the appeal was prohibited under s 41(1)(d) of the Ordinance.*

[19] In *Lim Fong Tsin & Ors v The Assistant Collector of Land Revenue & Ors* Richard Malanjum CJSS (as he then was) dealt with two issues namely, the status of a land application under the Ordinance and the authority to approve any land application and to issue title deed thereof. His Lordship agreed with the decision by Ian Chin J in *Sa-Mal* that *s 9 of the Ordinance gives the director the discretion on the alienation of State land subject to any general or special direction of the Minister.*

[20] Perhaps more on point for the purpose of discussion on the present application

is the case of *Workon Sdn Bhd v The Director of Lands & Surveys, Sabah*. The facts of the case are as follows.

[21] The applicant had been given an approval to register a draft title of a piece of land, which offer was accepted by the applicant. The applicant had also paid the necessary premium. A draft title was issued to the applicant whom had it duly signed and returned to the Lands and Surveys Department. However, the draft title was not registered in the applicant's name and later on it was found out that the area applied for by the applicant was overlapping with the area applied for by the interveners. The applicant contended that s 9 of the Ordinance imposes a duty on the Director of Lands and Surveys to issue the document of title.

[22] After having looked at the relevant provisions under the Ordinance and the Sabah Land Rules, His Lordship dismissed the application, inter alia, holding as follows:

> ... I am also inclined to refused this application as I am of the view that *s 9 of the Ordinance imposes only discretion upon the respondent and not a duty* (see *Lim Fong Tsin & Ors v The Assistant Collector of Land Revenue & Ors* [1997] MLJU 484; [1997] 1 LNS 7; *Sa-Mal (Sabah) Corp Sdn Bhd v Director of Lands and Surveys, Sabah* (OM) No K 4 of 1992 (unreported). And I note that the applicant here is not seeking for an order to secure performance of a duty to exercise the discretion or to exercise it based on proper legal principles. What is being sought for is 'an order of mandamus against the Director of Lands and Surveys (the respondent) to issue the document of title in respect of Draft Title Country Lease Number 085328016 in favour of the applicant'. That I think is not the same as asking for an order that the respondent performs his duty to exercise his discretion.

[23] The above cases *clearly illustrate that s 9 of the Ordinance imposes only discretion upon the fourth respondent to alienate land, not a duty and such discretion is not subject to an order of mandamus.* I should note that Richard Malanjum J in of *Workon Sdn Bhd v The Director of Lands & Surveys, Sabah* appeared to have left a room for the availability of the relief had the applicant sought for an order to secure performance of a duty to exercise the discretion. However, there is no necessity for this court to consider this possibility herein as the applicant is not seeking to compel the fourth respondent to perform his duty to exercise that discretion — see [4] above.

[63] In *Abdulah @ Abdullah Nasib Mohd Noor & Ors v Penolong Pemungut Hasil Tanah Beaufort* [2015] MLJU 1016; [2015] 1 LNS 589, the High Court (per Stephen Chung Hian Guan J) held:

> 36. Based on the evidence adduced, *the draft titles have not been registered and given to the Plaintiffs. The land which they applied for has not been registered* in their names and not vested in them. The *land which they applied for is still State land. Unless and until the land is registered in their names and vested in them, the State government can withdraw or revoke the application or alienation the land: Burhan Ating & Ors v Director of Lands & Surveys & Ors* [1992] 2 CLJ Rep 211 ; [1992] 2 CLJ 1203; *North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor* [2011] 4 CLJ 729.

[64] Guided by the aforesaid authorities, which clearly shows that the alienation of state land under s 9 of the SLO is not mandatory but is discretionary, this court finds the respondent acted within his discretion to revoke the offer to alienate the land in accordance with the specific direction or decision of the Cabinet. In *Gula Sabah Sdn Bhd*'s case above, the High Court held:

> [34] Having regard to all of the above, I am of the view that the *respondent had not erred and had properly exercised his discretion under s 9 of the Ordinance to cancel the land application.* In so holding, I took note of the submission by learned counsel for the appellant that the present case is distinguishable from the cases which dealt with s 9 of the Ordinance *as there was already a letter of offer and a draft title issued. The short answer to this is that that it was so did not fetter the discretion of the respondent not to alienate the land and only registration under s 88 of the Ordinance would vest interest in the applicant — see The State Government of Sabah & Ors v Clarence Chiuh Ken Loong & Ors.* (Emphasis added.)

See also *North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor* [2010] MLJU 413; [2010] 2 MLRA 372 (CA).

[65] Although the applicant is seeking declaratory and prerogative reliefs in this application for inter alia, an order of declaration, certiorari and mandamus, the main relief which the applicant is seeking is an order of mandamus to compel the respondent to issue a document of title to the land to the applicant. In *Hassnar Hj MP Ebrahim* case above, the High Court stated as follows:

> [13] As to mandamus, the Court of Appeal in *See Choo @ See Guat Kiok v Suruhanjaya Sekuriti* [2006] 1 MLJ 649 referred to the following observation by Professor MP Jain in his book, *Administrative Law of Malaysia and Singapore*:
>
> > The order of mandamus is a command issued by the High Court asking an authority to perform a public duty imposed upon it by law ... Mandamus can be issued to any type of body, quasi-judicial, legislative, administrative and in respect of any type of function. *Mandamus can be granted only when a legal duty is imposed on an authority and the applicant has a legal right to compel the performance of the public duty prescribed by law*, and to keep the subordinate bodies and officers exercising public functions within the limits of their jurisdiction ... Mandamus is thus a very wide remedy which is available against a public officer to see that he does his duty.
> >
> > *What can be enforced through mandamus is a duty of a public nature, the performance of which is imperative and not optional or discretionary with the authority concerned. Thus, if an officer has power rather than a duty, and if he does not use his power, mandamus cannot be issued.* (Emphasis added.)
>
> [14] In *Workon Sdn Bhd v The Director of Lands & Surveys, Sabah* [1999] 4 MLJ 177; [1999] 1 LNS 40*, Richard Malanjum J (as His Lordship then was) succinctly stated the law on mandamus as follows:*
>
> > It is settled law that mandamus lies to secure the performance of a public duty in

which an applicant has sufficient legal interest to the performance. The duty to be performed must be of a public nature such as duty imposed by statute, custom, common law and even contract (see *Padfield v Minister of Agriculture, Fisheries and Foods* [1968] AC 997). Thus, *where a statute impose a duty, the performance or non-performance of which is not a matter of discretion, an order of mandamus may be issued. But if a power or discretion only, as distinct from a duty, exists an order of mandamus will not be granted by the court except to secure performance of a duty to exercise the discretion as maybe necessary, or a duty to exercise a genuine discretion or a discretion based on proper legal principles*. (see *R v Port of London Authority; ex p Kynock Ltd* [1919] 1 KB 176 (CA); Judicial Review by Michael Supperstone QC and James Goudie QC at p 307). Further, it does not cover duty in relation to a matter of a private nature or character nor does it extend to the performance of a mere moral duty.

An applicant for an order of mandamus must show that he has demanded performance of the duty and the authority or public official obliged to discharge it has refused that performance. There must be a distinct and specific demand or request to the authority or public official that it or he performs the duty imposed upon it or him. And there must be an unequivocally manifested refusal to comply with the demand or request on the part of the authority or public official. Where there is no obvious indication that there is a refusal it is a question of fact whether such conduct tantamount to a clear determination not to comply with the demand or request. However, delay in complying with the demand or request or indicating that compliance would be subject to unreasonable or unlawful conditions or a failure to give a direct answer to the demand or request may amount to refusal (see *R v Tower Hamlets LBC; ex p Kayne-Levenson* [1975] QB 431). (Emphasis added.)

This court's decision

Is the applicant entitled to an order of mandamus?

[15] A discussion on the issuance of documents of titles under the Ordinance must necessarily start off with Section 9 of the Ordinance which reads as follows:

(1) Subject to any general or special direction of the Cabinet the Director may alienate State land on such terms or in such manner as is authorised by this Ordinance and may also impose special conditions in respect thereof to be set out in the title.

...

[20] Perhaps more on point for the purpose of discussion on the present application is the case of *Workon Sdn Bhd v The Director of Lands & Surveys, Sabah*. The facts of the case are as follows.

[21] The applicant had been given an approval to register a draft title of a piece of land, which offer was accepted by the applicant. The applicant had also paid the necessary premium. A draft title was issued to the applicant whom had it duly signed and returned to the Lands and Surveys Department. However, the draft title was not registered in the applicant's name and later on it was found out that the area applied for by the applicant was overlapping with the area applied for by the

interveners. The applicant contended that S 9 of the Ordinance imposes a duty on the Director of Lands and Surveys to issue the document of title.

[22] After having looked at the relevant provisions under the Ordinance and the Sabah Land Rules, His Lordship dismissed the application, inter alia, holding as follows:

> ... I am also inclined to refused this application as I am of the view that s 9 of the Ordinance imposes only discretion upon the respondent and not a duty (see *Lim Fong Tsin & Ors v The Assistant Collector of Land Revenue & Ors* [1997] MLJU 484; [1997] LNS 7; *Sa-Mal (Sabah) Corp Sdn Bhd v Director of Lands and Surveys, Sabah* (OM) No K 4 of 1992 (unreported). And I note that the applicant here is not seeking for an order to secure performance of a duty to exercise the discretion or to exercise it based on proper legal principles. *What is being sought for is 'an order of mandamus against the Director of Lands and Surveys (the respondent) to issue the document of title in respect of Draft Title Country Lease Number 085328016 in favour of the applicant'. That I think is not the same as asking for an order that the respondent performs his duty to exercise his discretion.*

[23] The above cases clearly illustrate that *s 9 of the Ordinance imposes only discretion upon the fourth respondent to alienate land, not a duty and such discretion is not subject to an order of mandamus.* I should note that Richard Malanjum J in of *Workon Sdn Bhd v The Director of Lands & Surveys, Sabah* appeared to have left a room for the availability of the relief had the applicant sought for an order to secure performance of a duty to exercise the discretion. However, there is no necessity for this court to consider this possibility herein as the applicant is not seeking to compel the fourth respondent to perform his duty to exercise that discretion: see [4] above.

[24] I therefore hold that the applicant's prayer for an order of mandamus is misconceived. (Emphasis added.)

[66] In *Gula Sabah Sdn Bhd v Director of Lands and Surveys Department, Sabah* [2018] MLJU 1489, per Celestina Stuel Galid JC (as her Ladyship then was), in her judgment said:

> [34] ... I took note of the submission by the learned counsel for the appellant that the present case is distinguishable from the cases which dealt with s 9 of the Ordinance as there was already a letter of offer and a draft title issued. The short answer to this is that that *it was so did not fetter the discretion of the respondent not to alienate the land and only registration under s 88 of the Ordinance would vest interest in the applicant* — see *The State Government of Sabah & Ors v Clarence Chiuh Ken Loong & Ors*.

[67] As s 9 of the SLO only imposes a discretion upon the respondent to alienate land and not a duty, such discretion is not subject to an order of mandamus. Hence, this court finds that the applicant's prayer for an order of mandamus is without merit.

[68] The applicant contends that they had a legitimate expectation that the title to the land will be issued to them and a right to be heard in regard to the

alienation and/or revocation of the offer to alienate the land. In *The State Government of Sabah & Ors v Clarence Chiuh Ken Loong & Ors* [2017] 3 MLJ 127, the court also dealt with the issue of whether the plaintiffs therein had legitimate expectation to be issued with title deeds for the subject lands pursuant to the letters of offer issued to them. The plaintiffs had also paid 50% of the premium payable for the lands. Despite that, the Lands and Surveys Department subsequently informed the plaintiffs that the registered survey plans for their land applications could not be issued because the lands were within the Forest Reserve of Madai Baturong. The Court of Appeal allowed the appeal, inter alia, holding as follows:

> [24] ... The *alienation of state land is regulated by the Sabah Land Ordinance which lays out clear provisions on the process of alienation of land in the state of Sabah.*
>
> [25] It is plain and clear that s 12 of the Sabah Land Ordinance and r 2 of the Sabah Land Rules do not recognise mere application for land and any payment made pursuant thereto as an undertaking that, the application for land has been approved ... And under s 88, it is clearly provided that any interest in land shall be valid only upon registration of title ...
>
> [26] ... *The doctrine of legitimate expectation does not apply and cannot override the legal provision as clearly stipulated under the Sabah Land Ordinance ...*

[69] In *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi K Perumal* [2001] 2 CLJ 525, the Federal Court stated as follows:

> In this regard, we found support in the passage of the judgment of Barwick CJ in *Twist v Randwick Municipal Council* [1976] 136 CLR 106 at p 110:
>
> > ... if the legislation has made provision for that opportunity to (be heard) to be given to the subject before his person or property is so affected, the court will no be warranted in supplementing the legislation, even if the legislative provision is not as full and complete as the court might think appropriate.
>
> *Thus, if the Legislature has addressed itsself to the question whether an opportunity should be afforded the citizen to be relevantly heard and has either made it clear that no such opportunity is to be given or has, by its legislation, decided what opportunity should be afforded, the court being bound by the legislation as much as is the citizen, has no warrant to vary the legislative scheme.*

[70] Given the above, consistent with the prerogative or discretionary nature of respondent's power to alienate land, and in the absence of any provision in the Sabah Land Ordinance and/or the Sabah Land Rules to afford the right to be heard in regard to alienation of land to the applicant, this court is inclined to agree with the respondent that the revocation was done in accordance with s 9 of the SLO and the Sabah Land Rules and is not contrary to the rules of natural justice. This court finds that the doctrine of legitimate expectation does

not apply to the instant case and cannot override the express statutory provisions of the SLO and the Sabah Land Rules. Similar notion and/or approach has been applied in the Supreme Court case of *Minister of Home Affairs, Malaysia v Persatuan Aliran Kesedaran Negara* [1990] 1 MLJ 351 where the court dismissed the appeal for an order of mandamus directing the Minister of Home Affairs to hear the appellant's application for the permit to print and publish in Bahasa Malaysia a magazine principle on the basis that the law regulating the application did not provide for such requirement and Minister had acted reasonably within his authority.

[71] Furthermore, it is submitted by the respondent that the revocation was done in good faith by the respondent with the intention of refunding to the applicant the partially paid premium in the sum of RM2,595,000 and surveying fee of RM9,764.12 as stated in the letter of revocation dated 8 January 2021 exhibited in 'N23' of applicant's affidavit. This practice is in accordance with r 2(6) of the Land Rules which provides as follows:

> (6) If the application is refused, any sums paid under subrule (3) shall be refunded to the applicant.

However, the applicant guided by the misconception that the offer to alienate land had somehow conferred to them an irrevocable right to a State land had opted to force that misconception through this judicial review application and to date, have yet to submit its claim for refund to the respondent. Like any other citizen of Sabah, Malaysia, the applicant is bound by law and practice or procedure set out in the SLO and the Sabah Land Rules and this court should not read words into a statute and compel the respondent to issue a document of title to the applicant on the ground of legitimate expectation and breach of natural justice.

[72] The applicant contends that the field survey carried out by the ACLR, Tuaran on 29 November 2020 and the Survey Plan prepared by Juruukur Wahdah shows that the land does not fall within any existing foreshore reserve.

[73] Section 4 of the Sabah Land Ordinance defines 'foreshore' as follows:

> 'foreshore' means all that land lying between the high-water mark and low-water mark of ordinary spring tides;

[74] Section 5 of the SLO provides:

> 5 *The entire property in and control of State land or land reserved for a public purpose is and shall be vested solely in the Government.*

[75] Section 26 of the SLO provides as follows:

26(1) Unless otherwise expressly provided in any title, the entire property in and control of the waters of all rivers, creeks, streams and watercourses, and of the seashore below high water mark is and shall be vested solely in the Government.

(2) The *Government also has power to reserve such portion of land as may be deemed advisable* along the banks of rivers, streams or creeks, *or along the seashore above high water mark*, or along the ridges of hills. Such reservations shall be shown on all documents of title.

[76] Having regard to ss 4, 5 and 26 of the SLO, until a document of title is issued and registered in the name of the applicant, the state government has power to reserve such portion of land as may be deemed advisable along the seashore above high water mark or land lying between the high water mark and the low water mark as foreshore reserve or for a public purpose. Hence, the survey plan prepared by Juruukur Wahdah is not conclusive and needs to be verified and approved by the Lands and Surveys Department for the purpose of issuance of document of title. It is not disputed that the document of title to the land had not been issued. Therefore, the land is still vested in the government and the state government has power to revoke the offer to alienate land and/or reserve such portion of land as may be advisable for a public purpose or foreshore reserve. See *Abdullah Nasib Mohd Noor*'s case above. Further, there is evidence to show that a large portion of the land applied by the applicant was identified to be located at the 'Protected Conservation (Development Prohibited) Zone' in the current Draft Dalit Local Plan of the Shoreline Management Plan Approved by the Government in 2007 whereby tourism activity is prohibited. As the land may or would be reserved for a public purpose, this court is not inclined to allow the discretionary relief of declaration as prayed for by the applicant.

[77] In *Evergreen Frontier (M) Sdn Bhd v The Director of Lands and Surveys, Sabah & Anor* [2005] 2 MLJ 644, Linton Albert JC in his judgment said:

[14] ... *I do not think it is either useful or appropriate to grant the declaratory and other orders requiring the defendants to proceed to go about issuing the document of title of the replacement land* to the plaintiff, not so much because the plaintiff may yet again be sent on another wild-goose chase but because the orders *would run foul of the Government Proceedings Act 1956.* Although couched in language that does not appear to be inconsistent with the Government Proceedings Act 1956, the effect of these orders, *if granted, would amount to order of specific performance against the government which is prohibited by s 29 of the Government Proceedings Act 1956 ...*

[78] I have considered the other points and submissions raised by both parties and I respectfully opine that it has not persuaded me to change my findings above.

A PRINCIPLE OF JUDICIAL REVIEW

[79] It is settled that a judicial review is not an appeal and an impugned decision is susceptible to judicial review on the grounds of illegality, irrationality and procedural impropriety. In *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145, the Federal Court (per Edgar Joseph Jr FCJ) held:

> It is often said that judicial review is concerned not with the decision but the decision making process (see eg *Chief Constable of North Wales Police v Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the courts in judicial review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of procedural impropriety.
>
> But Lord Diplock's other grounds for impugning a decision susceptible to *Judicial Review* make it abundantly clear that such a *decision is also open to challenge on grounds of 'illegality' and 'irrationality'* and, in practice, this *permits the courts to scrutinize such decisions not only for process, but also for substance.*

[80] In *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629, the Federal Court held:

> [15] ... Historically, judicial review was only concerned with the decision making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroad into this field of administrative law. *Rama Chandran* is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of inferior tribunal *may be reviewed on the grounds of 'illegality', 'irrationality' and possibly 'proportionality' which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus, the distinction between review and appeal no longer holds.*

[81] From the evidence and circumstances of this case, this court finds that the Cabinet's decision to revoke the offer to alienate land as the land may be or needs to be reserved for a public purpose is not so unreasonable that no decision maker or authority could have made. In the premises, the decision of the respondent to exercise his discretion under s 9 of the SLO to revoke the offer to alienate land in accordance the Cabinet's decision or direction is lawful and valid. Unless and until the decision of the Cabinet has been quashed or set aside by the court, the decision of the respondent dated 8 January 2021 stands.

CONCLUSION

[82] After perusing the application for judicial review, statutory statement, affidavits and the submissions filed by both parties, this court finds that the applicant had failed to prove the grounds for judicial review enunciated by the Federal Court in *Ramachandran* and *Ranjit Kaur S Gopal Singh*'s case above. From the affidavit evidence, the applicant may, at best, have a contract with the respondent and is also entitled to a refund of the premium paid for the land. See *Workon Sdn Bhd*'s case above.

[83] Based on the aforesaid reasons, the application for judicial review herein is dismissed with no order as to costs.

Application dismissed.

Reported by Ahmad Ismail